

# **APPENDIX**

**JUNE 21**

**Investigation Into Espionage**

## **EXTENSION OF REMARKS**

OF

**HON. ALVIN E. O'KONSKI**

OF WISCONSIN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, June 21, 1950

Mr. O'KONSKI. Mr. Speaker, under leave to extend my remarks in the Record, I include the following:

Whereas the undersigned constitute all the members of the December 18, 1948, special Federal grand jury of the District Court of the United States for the Southern District of New York, impaneled to inquire into espionage and subversive activities; and

Whereas this Federal grand jury has heard a volume of testimony concerning the activities of many men and women, associated with or having knowledge of a continuing conspiracy against the security of the Nation; and

Whereas this testimony and evidence have led this special Federal grand jury to certain conclusions it deems proper and important to be brought to the attention of the executive, legislative, and judicial departments of the United States Government for such action as may be necessary or appropriate, the undersigned members of this grand jury respectfully show and allege as follows:

1. The safety of this Nation and its institutions is being jeopardized because:

(a) The underground activities of Communists in this country, organized in a continuing conspiracy and using effective techniques to extend their influence beyond their ranks, have greatly increased during the last 5 years; and because

(b) The Nation, confronted with an entirely new situation in its history—a situation in which for the first time the loyalty of certain of its own citizens has been diverted to a foreign ideology—has not as yet devised adequate means to combat this menace; and because

(c) There has been and is now a concerted attempt on the part of many, both Communists and disloyal Americans aided by "fellow travelers," to conceal the truth from the American people.

This conviction was arrived at by the grand jury after an experience in which it came face to face with the evil that is communism. Its substitution of the false for the true as the standard of judgment has introduced into human affairs a new attack on man's integrity.

The American people cannot afford to tolerate evil of this character, particularly in their Government, nor, on the other hand, can they deny their fellow citizens those civil rights guaranteed by the Constitution. But among such civil rights is not the right to be employed by the Government and the people are correct in demanding that all entrusted with the welfare and safety of the country be above suspicion.

2. This grand jury in a presentment submitted on April 26, 1949, warned the American people against the prevalence and increase of espionage activities. It specifically stated that existing laws applicable to espionage are "inadequate and unrealistic." It stated that these laws were loosely drawn. The grand jury now repeats that such laws are riddled with loopholes. Previously it recommended that new legislation or the amendment of existing legislation be enacted promptly. The grand jury now repeats that recommendation. Such legislation—the in-

ternal security bill which embodies satisfactory provisions—has already been passed by the House of Representatives and is now in Senate committee. It should be speedily brought to passage and made the law of the land.

3. The grand jury, in the same presentment, stated: "Having seen at first hand the difficulties in arriving at the truth concerning espionage violations, when witnesses have been alerted by publicized charges and countercharges, the grand jury recommends that all investigating bodies conduct their inquiries into espionage in secret." It repeats that recommendation. The latter does not imply that when such investigations are completed secrecy should thereafter prevail. It does imply that the half-public, half-secret operation of any investigatory agency is both confusing and harmful; and that no permanent good can be served unless a conclusive report is presented to the American people which will be convincing in its thoroughness and its honesty.

4. The grand jury system was anciently established as the representative of the people, to insure law and order and to protect the people against injustice, maladministration, and lawlessness. The grand jury is vested with the broadest and most unlimited powers, and has no legal responsibility for its decisions, unless corruptly made, to any public officer or to any branch of the Government. It not only can but it must conduct inquiry into violations of the Federal laws on its own initiative and, acting alone, it has the power of subpoena. Where it knows evidence exists which has not been presented to it, its duty is to order such evidence produced.

The very existence of this grand-jury system is a bulwark of independence. The grand jury's purpose is at once to ferret out the guilty and to protect the innocent whether the former is shielded by powerful influences or the latter is unjustly accused.

This grand jury has been surprised at the prevalent ignorance of its functions, an ignorance that apparently extends into areas where the grand jury's cooperation should be sought. The individual citizen himself in or out of the Government not only has the right but the obligation, when he has evidence of the law's violation, to present this evidence to a grand jury.

By law, this grand jury expires on June 15, 1950, after serving its maximum legal term of 18 months. It believes this time limitation is wisely established for no group should be longer entrusted with such powers. But the experience and insight which it has acquired have been valuable adjuncts in its deliberations and in the establishment of a record available to any successor grand jury. From such experience, this grand jury is convinced that a similar body should promptly be impaneled so that it can immediately equip itself with the necessary knowledge to assay all evidence of espionage and subversive activities presented to it.

This grand jury, therefore, strongly recommends the impaneling of a new grand jury in the Southern District of New York to carry on both the work which now remains uncompleted and that which will arise in the future.

5. In its 18 months, this grand jury has had an intimate insight into the operation of the Federal Bureau of Investigation and has come to have the highest regard for the efficiency, the thoroughness and the honesty with which its affairs are conducted under J. Edgar Hoover. In the Federal Bureau of Investigation, the Nation has one of its most potent agencies to protect its security. The present Congress should be commended for its recent action in strengthening the hand of Mr. Hoover in this vital work.

1950

ORD—APP1

6. The grand jury is not convinced that the loyalty boards established by the Government are sufficient protection against the infiltration of Communists or of the Communist-inspired into governmental departments.

It is further convinced that the security of the country is not adequately protected if a loyalty board limits its inquiry involving governmental employees to a determination of the individual's loyalty. Cornelius Vanderbilt Whitney, on his retirement as Secretary of Commerce, called public attention to this inadequacy and stated that, since all governmental departments "today deal with secret information," each and all their employees should be good security risks, and hence should be screened by standards that include "the company they keep and stability of character."

The grand jury endorses Mr. Whitney's position and recommends that Congress study means to insure against the Government's employment of any individual who is "a poor security risk"; and meanwhile repeats that no citizen is invested with the right to work in Government.

7. This grand jury has been greatly disturbed by certain court procedures in recent trials concerning communism and espionage. The maneuverings of defense lawyers have not only violated the decorum of judicial procedure but have furthered the Communist objective of establishing anarchy by undermining respect for the courts. Yet in pre-trial and trial hearings of espionage cases, such attorneys under existing law are often in a position to force on the prosecution the dilemma of choice between not proceeding or proceeding at the expense of revealing information injurious to national security. This choice is particularly grave when the Nation is at war.

The grand jury recommends to the proper authorities that a competent and exhaustive study be made by legal experts to determine if this situation cannot at least be mitigated.

8. The grand jury has been shocked at the lack of cooperation shown by certain lawyers who have appeared before it as witnesses, who refused to answer questions on the ground of self-incrimination, and who disregarded their obligation as citizens to further the ends of justice. If such a position is taken by any governmental employee, he or she would be, ipso facto, dismissed. Lawyers are officers of the court.

The grand jury, repeating its recommendation of April 1949, urges the judiciary and bar associations to take measures to disbar lawyers who refuse to answer questions on grounds of self-incrimination before judicial bodies, grand juries or governmental boards of inquiry.

9. The grand jury, acting on its own authority, instituted an investigation into the Amerasia case. In the time legally available to it, it has not been able to conduct as exhaustive an inquiry as it would desire. It has examined a number of witnesses, always with counsel of the Department of Justice present.

The grand jury, sworn to secrecy, may speak to the American public either through an indictment or a presentment and hence now advances the following conclusions:

(a) The Office of Strategic Service, which precipitated the Amerasia case, acted in a responsible manner.

(b) The officials immediately concerned between that time and the arrests of the six accused, acted in a responsible manner. The Federal Bureau of Investigation properly performed its duty, a duty which was not only conditioned on bringing criminals to justice, but on the equally important considerations of thwarting further crime and protecting national security.

(c) The grand jury has found no evidence that any official acted improperly in regard to the delay in the arrests.

(d) The grand jury has also found no evidence that any official acted improperly in regard to the delay in the arrests.

Justice was lenient in its prosecution of the case. If laws governing espionage had been different, the grand jury believes that the prosecution procedure would have been entirely different. Other telling factors involved certain legal procedures which, if followed, might have revealed to the enemy information that it was essential should be withheld. The determination of many of the legal issues involved, in particular the admissibility of evidence, would require a long and intensive study.

(e) The number of Government documents seized is not important, save as a demonstration that precautions against their theft from governmental departments were entirely inadequate. It is important, however, that a certain number of these documents pertained to national defense and that others of a different nature, in the hands of the enemy, would have aided it.

(f) The grand jury believes that the American people have been poorly served by the compounding of confusion through disclosures of half-truths, contradictory statements, and so forth, in this and similar cases.

(g) The grand jury believes that, at this juncture, it would be salutary if the Department of Justice would issue a public statement of the details of its handling of the case beginning with the time of the arrests, including a complete list and description of all documents or papers found in the office of Amerasia by any Government agent or in the possession of those arrested; and the reasons for the various steps taken by the prosecution.

10. As Special Assistant to the Attorney General of the United States, Thomas J. Donegan has served this grand jury, as he did its predecessor, from the day of its impaneling to that of its discharge. It has always been cognizant of his high purpose, his unquestioned probity, his unremitting zeal, and his devotion to duty. His knowledge of communism and the laws relating to the prosecution of espionage and subversion is expert. The country owes him a debt of gratitude.

11. Now, therefore, the grand jury respectfully petitions the court to accept this presentment and order it filed, authorizing the foreman and the secretary of the grand jury to send copies of it to the Members of Congress and to the proper officers of the executive department of the Government, and to permit such other use as may properly be made of this document.

Dated, New York, N. Y., June 15, 1950.

John Gilland Brunini, Foreman; John G. Kilbreth, Assistant Foreman; Hugh V. Doran, Secretary; Robert L. Barrows; Joseph P. Christianson; Mrs. Evelyn Zorn Dingwall; James Sumner Draper; Raymond C. Fowler; Robert Frese; G. Leonard Gold; Henry E. Grant; Harold C. Hahn; Richard Brown Jones; Murray Kaner; Francis Keally; Samuel B. Leight; Sidney Leshen; Herman E. Nathan; Bernhard K. Schaefer; Harry Scherman; John Schreiber; Siegfried Stern; Wheeler Williams.